

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BASHARA MERRIWEATHER, #209190,)	
Plaintiff,)	
)	No. 1:22-cv-305
-v-)	
)	Honorable Paul L. Maloney
FREDEANE ARTIS, <i>et al.</i> ,)	
Defendants.)	
_____)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff Merriweather, a prisoner under the control of the Michigan Department of Corrections, alleges Defendants violated his Eighth Amendment rights. Plaintiff pleads that Defendants' actions constituted deliberate indifference when they forced Plaintiff to share a cell with a prisoner who had tested positive for COVID-19. Defendants filed a motion to dismiss based on standing (ECF No. 39). Because Plaintiff never tested positive for the virus, Defendants argue Plaintiff failed to allege an injury. The Magistrate Judge issued a report recommending the Court grant Defendants' motion (ECF No. 49). Plaintiff filed objections (ECF No. 52).

After being served with a report and recommendation (R&R) issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Only those objections that are specific are entitled to a

de novo review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam).

The Magistrate Judge notes that (1) Plaintiff did not plead that he contracted COVID only that that he feared for his safety and (2) Plaintiff seeks only monetary damages as relief. The Magistrate Judge concludes that fear of exposure to the virus is not a concrete injury that can be redressed by an award of damages. As a result, the Magistrate Judge concludes Plaintiff lacks standing to pursue the only remedy sought in the complaint.

Plaintiff objects. Plaintiff cites several district court cases where the judge found standing to sue based on a prison facility's response to the COVID-19 outbreak.

The Court overrules Plaintiff's objection. The authority Plaintiff cites does not address the specific reasoning in the Report and Recommendation. The Magistrate Judge found that Plaintiff lacks standing to seek damages because the injury alleged could not be redressed by damages. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) (explaining that courts must consider "standing separately for each form of relief sought.") (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 185 (2000)).

Accordingly, the Court **ADOPTS** the report and recommendation (ECF No. 49). The Court **GRANTS** Defendants' motion to dismiss (ECF No. 39). **IT IS SO ORDERED.**

Date: September 20, 2023

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge